IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 12911 of 2005

Between:

Bathena Lakshminarayana S/o.Subbaiah
R/o.Kanduluru Village, Prakasam District.

..... PETITIONER

AND

The General Manager Prakasam District Cooperative
Central Bank Ltd., Ongole.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more in the nature of writ of mandamus declaring the action of the respondent Bank in issuing the Demand Notice dt.31.7.1999 for Rs.2,09,945/and auction notice CEP 838/02-03 dt.13.5.2005 as illegal, improper and violation of Articles 14,16 of the Constitution of India and opposed to principles of natural justice by directing the respondent Bank to include the name of the petitioner in the list for writing off the loans and interest thereby under debt relief scheme and pass.

Counsel for the Petitioner: MR.K.HARI PRASAD

Counsel for the Respondent: Mr.R.V.Nagabhushana Rao

The Court made the following :

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.12911 of 2005

JUDGMENT:

The action of the respondent Prakasham District Cooperative Central Bank Limited, Ongole in issuing demand notice dated 31-7-1999 for Rs.2,09,945/- and auction notice dated 13-5-2005 is questioned by the petitioner in this writ petition.

The averments in the affidavit filed in support of the writ petition are that the petitioner is an agriculturist and his father obtained a sum of Rs.90,500/- as long term loan on 27-3-1981 from the respondent bank. The petitioner contends that he paid a sum of Rs.75,000/- in all these years, (which fact is disputed by the respondent – bank). For failure of the petitioner's father to repay the loan amount, the respondent-bank issued demand notice and proceeded with recovery proceedings under Sections 103 and 104 of the Andhra Pradesh Co-operative Societies Act, 1964 (herein after referred to as 'the Act') and Rule 62(5) of the A.P. Co-operative Societies Rules. The petitioner contends that the respondent- bank is not entitled to attach or auction his tractor, inasmuch as the said tractor is used for agricultural purposes. He also contends that a policy decision has been taken by the Government to write off all loans, which were taken prior to 1986 and refers to Government orders relating to waiver of interest. The petitioner contends that in reply to the demand notice issued by the respondent bank, under Section 71 of the Act, on 31-7-1999, he had issued a reply notice dated 30-8-1999 denying all the allegations, and that the respondents, without considering the objections filed by the petitioner, had issued the auction notice dated 13-5-2005. He contends that the claim of the respondent bank is barred by limitation and that the respondent bank without giving opportunity to the petitioner to consider the objections filed by him, has claimed high rate of interest including compounding and penal rate of interest, which he contends is violative of R.B.I. guide lines, provisions of the Cooperative Societies Act and the Rules, byelaws etc., He refers to the earlier writ petition filed by him in W.P.4928 of 1993 wherein the Division Bench of this Court by order dated 22-10-1997, held that the question whether the petitioner was entitled for any relief need not be considered in the writ petition and the petitioner was directed to file his objections before the authority concerned to the earlier demand notice issued on 25-2-1992.

It is the case of the respondent Bank, in this writ petition, that after compliance with all statutory provisions and in accordance with the judgment of this Court, the

demand notice dated 31-7-1999 was issued. The petitioner was silent for six years and it is only when the consequential proceedings were issued on 13-5-2005 that he has chosen to file this writ petition, challenging the demand notice dated 31-7-1999 after a lapse of nearly six years. The allegation that statutory provisions or the Government policy have been violated by the respondent is denied.

Needless to state that disputed questions of fact are not, normally, adjudicated in writ proceedings under Article 226 of the Constitution of India, more so, when the petitioner has an effective alternative remedy by way of an appeal under Section 76 of the Act and since all these questions of fact and law can be examined by the appellate Tribunal. Where facts are in dispute, this Court would not normally exercise its discretion under Article 226 of the Constitution of India, and entertain disputes such as those arising in the present writ petition.

The writ petition is accordingly dismissed. Needless to state that this order would not come in the way of the petitioner exercising his right of appeal under Section 76 of the Act. If such an appeal is filed by the petitioner, the Tribunal shall consider the same on its own merits without being influenced by the observations made in this order.

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-6-2005

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To:

1. The General Manager Prakasam District Cooperative
   Central Bank Ltd., Ongole.

2. Two C.D. copies